

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEROME GIANNOPOULOS

Appeal No. 97-4214
Application 08/603,348¹

ON BRIEF

Before STAAB, McQUADE and NASE, Administrative Patent Judges.
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Jerome Giannopoulos appeals from the final rejection of claims 11 through 22, all of the claims pending in the

¹ Application for patent filed February 20, 1996. According to appellant, the application is a continuation-in-part of Application 08/494,923, filed June 26, 1995, now abandoned.

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application.

The invention is a motorized scaffold truck. Claim 11 is representative and reads as follows:

11. A universal motorized scaffold truck comprising:

a horizontal support frame having scaffold supporting means for removably and entirely supporting conventionally available scaffold means thereon, said frame supported by wheels for lateral movement on a ground surface;

a vertically extendable steering mast having upper and lower ends and secured at said lower end to said frame and having a steering mechanism connected for steering selected of said wheels from the upper end of said mast;

an electric motor mounted on said frame and engaged for driving selected of said wheels; and

a switch at the upper end of said mast for selectively energizing said electric motor.

The references relied upon by the examiner as evidence of anticipation and obviousness are:

Everitt	2,857,212	Oct. 21, 1958
Rosander	3,503,466	Mar. 31, 1970

The appealed claims stand rejected as follows:

a) claims 11, 12 and 15 through 19 under 35 U.S.C. § 102(b) as being anticipated by Rosander;

b) claims 13, 14, 21 and 22 under 35 U.S.C. § 103(a) as

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being unpatentable over Rosander; and

c) claim 20 under 35 U.S.C. § 103(a) as being
unpatentable over Rosander in view of Everitt.

Reference is made to the appellant's brief (Paper No. 10) and to the examiner's answer (Paper No. 11) for the respective positions of the appellant and the examiner with regard to the merits of these rejections. On page 5 of the brief, the appellant states that "[c]laims 11 through 22 are grouped together and stand or fall together" and that "the Board may select claim 11 from the group and decide the appeal on the ground of rejection based on that claim alone." Thus for purposes of this appeal, claims 12 through 22 shall stand or fall with representative claim 11.

As indicated above, claim 11 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Rosander. Rosander discloses a motorized device for moving and guiding a wheel-supported scaffold. The device includes a horizontal platform and frame 10, 11, a front wheel 12, a vertically extendible steering mechanism 40-49 operatively connected to the front wheel (see column 2, line 68 through column 3, line 3), two

rear wheels 14, a battery-powered motor for driving the rear wheels (see column 1, lines 64 through 67), a switch 50 at the upper end of the steering mechanism for controlling the motor, a scaffold-steadying bracket 57-59 mounted on the steering mechanism, and a scaffold-engaging bolster 20 mounted on the platform and frame. The scaffold-engaging bolster includes vertical and horizontal extension members 30, 32 having end clevises 30', 32' which can be moved into engagement with components 60, 61 of the scaffold as illustrated in Figure 1. The scaffold-steadying bracket also includes clevises 59 for engaging a component of the scaffold. Rosander explains that

[a]fter the device has been positioned as shown and described, with the clevises engaging the scaffold, the operator may mount the scaffold and move and guide the scaffold without dismounting. The motor control 50 is within reach of the operator and the handle grip 49 permits easy guiding of the device and scaffold [column 2, lines 58 through 63].

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

The sole issue raised in this appeal by the appellant is

whether Rosander meets the limitation in claim 11 requiring "scaffold supporting means for removably and entirely supporting conventionally available scaffold means thereon." This limitation is written in means plus function format and thus is to be construed in accordance with 35 U.S.C. § 112, sixth paragraph, as covering the corresponding structure described in the specification and equivalents thereof.

The examiner submits that Rosander's scaffold-steadying bracket, scaffold-engaging bolster and platform meet the limitation at issue because they are "capable of entirely supporting a scaffold which has a relatively small cross-section" (answer, page 3).

In essence, the appellant contends that

Rosander discloses an entirely different structure. Rosander does not support scaffolding on his motorized vehicle 10, nor does he provide any means for doing so, and in addition his vehicle 10 is obviously too small to do so and he provides no such suggestion anywhere in his disclosure that this even could or should be done. To the contrary, he has to provide a complex multiple connected structure to connect his vehicle 10 to the scaffold in order to drag the wheeled scaffold structure along with the motorized vehicle 10 [brief, page 6].

The appellant is correct to the extent that the Rosander reference does not expressly disclose (or suggest) that the

scaffold-steadying bracket, scaffold-engaging bolster and platform described therein perform the function of removably and entirely supporting conventionally available scaffold means thereon as recited in claim 11. This, however, is not dispositive of the issue before us. It is not necessary that an anticipatory reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984). In the present case, it is not apparent, nor has the appellant cogently explained, why Rosander's scaffold-steadying bracket, scaffold-engaging bolster and platform are not inherently capable of removably and entirely supporting conventionally available scaffold means thereon as recited in claim 11. Thus on the face of it, the Rosander structure meets the claimed function under principles of inherency. Moreover, the appellant has neither asserted nor shown that this prior art structure is not the equivalent of the corresponding structure described in the appellant's specification for accomplishing the claimed function. In this light, the appellant's position on appeal

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that the standing 35 U.S.C. § 102(b) rejection of claim 11 is unsound because Rosander does not meet the "scaffold supporting means" limitation in this claim is not well taken.

Therefore, we shall sustain the examiner's rejection of claim 11 and of claims 12 through 22 which stand or fall therewith.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

LAWRENCE J. STAAB)	
Administrative Patent Judge)	
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JOHN P. McQUADE)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

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Carothers and Carothers
445 Fort Pitt Boulevard, Suite 500
Pittsburgh, PA 15219